

May 1, 2001

**MULTILATERAL AGREEMENT
ON THE LIBERALIZATION OF
INTERNATIONAL AIR TRANSPORTATION**

The Parties to this Agreement (hereinafter, "the Parties");

Desiring to promote an international aviation system based on competition among airlines in the marketplace with minimum interference and regulation;

Desiring to facilitate the expansion of international air transport opportunities;

Recognizing that efficient and competitive international air services enhance trade, benefit consumers, and promote economic growth;

Recognizing the contribution made by the Asia-Pacific Economic Cooperation forum in facilitating discussions on the liberalization of air services;

Desiring to make it possible for airlines to offer the traveling and shipping public a variety of service options and wishing to encourage individual airlines to develop and implement innovative and competitive prices;

Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardize the safety of persons or property, adversely affect the operation of air transportation, and undermine public confidence in the safety of civil aviation; and

Noting the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944;

Have agreed as follows:

Article 1 Definitions

For the purposes of this Agreement, unless otherwise stated, the term:

1. "Agreement" means this Agreement, its Annex and Appendix, and any amendments thereto;
2. "Air transportation" means the public carriage by aircraft of passengers, baggage, cargo, and mail, separately or in combination, for remuneration or hire;
3. "Convention" means the Convention on International Civil Aviation, opened for signature at Chicago on December 7, 1944, and includes:
 - a. any amendment that has entered into force under Article 94(a) of the Convention and has been ratified by all Parties to this Agreement; and
 - b. any Annex or any amendment thereto adopted under Article 90 of the Convention, insofar as such Annex or amendment is at any given time effective for all Parties to this Agreement;
4. "Designated airline" means an airline designated and authorized in accordance with Article 3 of this Agreement;
5. "Full cost" means the cost of providing service, including a reasonable amount for administrative overhead;
6. "International air transportation" means air transportation that passes through the airspace over the territory of more than one State or APEC member economy as identified in the Appendix to the Annex;
7. "Price" means any fare, rate or charge for the carriage of passengers, baggage and/or cargo (excluding mail) in air transportation, including surface transportation in connection with international air transportation, if applicable, charged by airlines, including their agents, and the conditions governing the availability of such fare, rate or charge;
8. "Stop for non-traffic purposes" means a landing for any purpose other than taking on or discharging passengers, baggage, cargo and/or mail in air transportation;
9. "Territory" means the land areas under the sovereignty, jurisdiction, authority, administration, protection, or trusteeship of a Party, and the territorial waters adjacent thereto; and
10. "User charge" means a charge imposed on airlines for the provision of airport, air navigation, or aviation security facilities or services including related services and facilities.

Article 2 Grant of Rights

1. Each Party grants to the other Parties the following rights for the conduct of international air transportation by the airlines of the other Parties:
 - a. the right to fly across its territory without landing;

- b. the right to make stops in its territory for non-traffic purposes;
- c. the right, in accordance with the terms of their designations, to perform scheduled and charter international air transportation between points on the following route:
 - i. from points behind the territory of the Party designating the airline via the territory of that Party and intermediate points to any point or points in the territory of the Party granting the right and beyond;
 - ii. for all-cargo service or services, between the territory of the Party granting the right and any point or points; and
- d. the rights otherwise specified in this Agreement.

2. Each designated airline may on any or all flights and at its option:

- a. operate flights in either or both directions;
- b. combine different flight numbers within one aircraft operation;
- c. serve behind, intermediate, and beyond points and points in the territories of the Parties on the routes in any combination and in any order;
- d. omit stops at any point or points;
- e. transfer traffic from any of its aircraft to any of its other aircraft at any point on the routes;
- f. serve points behind any point in its territory with or without change of aircraft or flight number and hold out and advertise such services to the public as through services;
- g. make stopovers at any points whether within or outside the territory of any Party;
- h. carry transit traffic through any other Party's territory; and
- i. combine traffic on the same aircraft regardless of where such traffic originates;

without directional or geographic limitation and without loss of any right to carry traffic otherwise permissible under this Agreement.

3. The provisions of paragraph 2 of this Article shall apply subject to the requirement that, with the exception of all-cargo services, the service serves a point in the territory of the Party designating the airline.

4. On any segment or segments of the routes above, any designated airline may perform international air transportation without any limitation as to change, at any point on the route, in type or number of aircraft operated; provided that, with the exception of all-cargo services, in the outbound direction, the transportation beyond such point is a continuation of the transportation from the territory of the Party that has designated the airline and, in the inbound direction, the transportation to the territory of the Party that has designated the airline is a continuation of the transportation from beyond such point.

5. Nothing in this Agreement shall be deemed to confer on the airline or airlines of one Party the right to take on board, in the territory of another Party, passengers, baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Party.

Article 3

Designation and Authorization

1. Each Party shall have the right to designate as many airlines as it wishes to conduct international air transportation in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the concerned Parties in writing through diplomatic or other appropriate channels and to the Depositary.

2. On receipt of such a designation, and of applications from the designated airline, in the form and manner prescribed for operating authorizations and technical permissions, each Party shall grant appropriate authorizations and permissions with minimum procedural delay, provided that:

- a. effective control of that airline is vested in the designating Party, its nationals, or both;
- b. the airline is incorporated in and has its principal place of business in the territory of the Party designating the airline;
- c. the airline is qualified to meet the conditions prescribed under the laws, regulations, and rules normally applied to the operation of international air transportation by the Party considering the application or applications; and
- d. the Party designating the airline is in compliance with the provisions set forth in Article 6 (Safety) and Article 7 (Aviation Security).

3. Notwithstanding paragraph 2, a Party need not grant authorizations and permissions to an airline designated by another Party if the Party receiving the designation determines that substantial ownership is vested in its nationals.

4. Parties granting operating authorizations in accordance with paragraph 2 of this Article shall notify such action to the Depositary.

5. Nothing in this Agreement shall be deemed to affect a Party's laws and regulations concerning the ownership and control of airlines that it designates. Acceptance of such designations by the other Parties shall be subject to paragraphs 2 and 3 of this Article.

Article 4

Revocation of Authorization

1. Each Party may withhold, revoke, suspend, limit or impose conditions on the operating authorizations or technical permissions of an airline designated by another Party where:

- a. effective control of that airline is not vested in the designating Party, its nationals, or both;
- b. the first Party determines that substantial ownership is vested in its nationals;

- c. the airline is not incorporated or does not have its principal place of business in the territory of the party designating the airline;
 - d. the airline has failed to comply with the laws, regulations, and rules referred to in Article 5 (Application of Laws) of this Agreement; or
 - e. the other Party is not maintaining and administering the standards as set forth in Article 6 (Safety).
2. Unless immediate action is essential to prevent further noncompliance with subparagraphs 1(d) or 1(e) of this Article, the rights established by this Article shall be exercised only after consultation with the Party designating the airline.
3. A Party that has exercised its right to withhold, revoke, suspend, limit or impose conditions on the operating authorizations of an airline or airlines in accordance with paragraph 1 of this Article shall notify its action to the Depositary.
4. This Article does not limit the rights of any Party to withhold, revoke, suspend, limit or impose conditions on the operating authorization or technical permission of an airline or airlines of other Parties in accordance with the provisions of Article 7 (Aviation Security).

Article 5 **Application of Laws**

1. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the operation and navigation of aircraft shall be complied with by the airlines designated by any other Party.
2. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the admission to or departure from its territory of passengers, crew or cargo on aircraft (including regulations relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers, crew or cargo of the airlines of any other Party.
3. No Party shall give preference to its own or any other airline over a designated airline of the other Parties engaged in similar international air transport in the application of its customs, immigration and quarantine regulations.
4. Passengers, baggage and cargo in direct transit through the territory of any Party and not leaving the area of the airport reserved for such purpose shall not undergo any examination except for reasons of aviation security, narcotics control, prevention of illegal entry or in special circumstances.

Article 6 Safety

1. Each Party shall recognize as valid, for the purpose of operating the air transportation provided for in this Agreement, certificates of airworthiness, certificates of competency, and licenses issued or validated by the other Parties and still in force, provided that the requirements for such certificates or licenses at least equal the minimum standards that may be established pursuant to the Convention. Each Party may, however, refuse to recognize as valid for the purpose of flight above its own territory, certificates of competency and licenses for its own nationals granted or validated by another Party.
2. Each Party may request consultations with another Party concerning the safety standards maintained by that other Party relating to aeronautical facilities, aircrews, aircraft, and operation of the designated airlines. If, following such consultations, the first Party finds that the other Party does not effectively maintain and administer safety standards and requirements in these areas that at least equal the minimum standards that may be established pursuant to the Convention, the other Party shall be notified of such findings and the steps considered necessary to conform with these minimum standards, and the other Party shall take appropriate corrective action. Each Party reserves the right to withhold, revoke, suspend, or limit or impose conditions on the operating authorization or technical permission of an airline or airlines designated by the other Party in the event the other Party does not take such appropriate corrective action within a reasonable time.

Article 7 Aviation Security

1. In accordance with their rights and obligations under international law, the Parties reaffirm that their obligation to each other to protect the security of civil aviation against acts of unlawful interference forms an integral part of this Agreement. Without limiting the generality of their rights and obligations under international law, the Parties shall in particular act in conformity with the provisions of the Convention on Offenses and Certain Other Acts Committed on Board Aircraft, done at Tokyo on September 14, 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on December 16, 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on September 23, 1971, and the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, done at Montreal on February 24, 1988.
2. Each Party shall provide upon request of another Party all necessary assistance to that other Party to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, of their passengers and crew, and of airports and air navigation facilities, and to address any other threat to the security of civil air navigation.
3. Each Party shall, in its relations with the other Parties, act in conformity with the aviation security standards and appropriate recommended practices established by the International Civil Aviation Organization and designated as Annexes to the Convention; it shall require that operators of aircraft of its registry, operators of aircraft who have their principal place of business or permanent residence in its territory, and the operators of airports in its territory act in conformity with such aviation security provisions.
4. Each Party shall observe the security provisions required by the other Parties for entry into, for departure from, and while within their respective territories and each Party shall ensure that adequate measures are effectively applied within its territory to protect aircraft and to inspect passengers, crew, and their baggage and carry-on items, as well as cargo and aircraft stores, prior to and during boarding or loading. Each Party shall also

give positive consideration to any request from another Party for special security measures to meet a particular threat.

5. When an incident or threat of an incident of unlawful seizure of aircraft or other unlawful acts against the safety of passengers, crew, aircraft, airports or air navigation facilities occurs, the Parties shall assist each other by facilitating communications and other appropriate measures intended to terminate rapidly and safely such incident or threat.

6. When a Party has reasonable grounds to believe that another Party has departed from the aviation security provisions of this Article, the aeronautical authorities of that Party may request immediate consultations with the aeronautical authorities of the other Party. Failure to reach a satisfactory agreement within 15 days from the date of such request shall constitute grounds to withhold, revoke, suspend, limit, or impose conditions on the operating authorization and technical permissions of an airline or airlines of the other Party. When required by an emergency, a Party may take interim action prior to the expiry of 15 days.

7. Any Party that has exercised its right to withhold, revoke, suspend, or limit or impose conditions on the operating authorization of an airline or airlines in accordance with paragraph 6 of this Article shall notify such action to the Depositary.

Article 8

Commercial Opportunities

1. The airlines of each Party shall have the right to:

- a. establish offices in the territory of the other Parties for the promotion and sale of air transportation;
- b. engage in the sale of air transportation in the territory of the other Parties directly and, at the airlines' discretion, through their agents. The airlines shall have the right to sell such transportation, and any person shall be free to purchase such transportation, in local currency or in freely convertible currencies;
- c. convert and remit to the territory of its incorporation, on demand, local revenues in excess of sums locally disbursed. Conversion and remittance shall be permitted promptly without restrictions or taxation in respect thereof at the rate of exchange applicable to current transactions and remittance on the date the carrier makes the initial application for remittance; and
- d. pay for local expenses, including purchases of fuel, in the territories of the other Parties in local currency. At their discretion, the airlines of each Party may pay for such expenses in the territory of the other Parties in freely convertible currencies according to local currency regulation.

2. The designated airlines of each Party shall have the right:

- a. in accordance with the laws, regulations and rules of the other Parties relating to entry, residence, and employment, to bring in and maintain in the territories of the other Parties managerial, sales, technical, operational, and other specialist staff required for the provision of air transportation;

- b. to perform their own ground-handling in the territory of the other Parties ("self-handling") or, at their option, select among competing agents for such services in whole or in part. The rights shall be subject only to physical constraints resulting from considerations of airport safety. Where such considerations preclude self-handling, ground services shall be available on an equal basis to all airlines; charges shall be based on the costs of services provided; and such services shall be comparable to the kind and quality of services as if self-handling were possible; and
- c. in operating or holding out the authorized services on the agreed routes, to enter into cooperative marketing arrangements such as blocked-space, code-sharing or leasing arrangements, with:
 - i. an airline or airlines of any Party;
 - ii. an airline or airlines of any State or APEC member economy as identified in the Appendix to the Annex that is not party to this Agreement; and
 - iii. a surface transportation provider of any State or APEC member economy as identified in the Appendix to the Annex;

provided that all participants in such arrangements hold the appropriate authority and meet the requirements applied to such arrangements.

3. Notwithstanding any other provision of this Agreement, airlines and indirect providers of cargo transportation of the Parties shall be permitted without restriction to employ in connection with international air transportation any surface transportation for cargo to or from any points within or outside the territories of the Parties, including transport to and from all airports with customs facilities, and including, where applicable, the right to transport cargo in bond under applicable laws and regulations. Such cargo, whether moving by surface or by air, shall have access to airport customs processing and facilities. Airlines may elect to perform their own surface transportation or to provide it through arrangements with other surface carriers, including surface transportation operated by other airlines and indirect providers of cargo air transportation. Such intermodal cargo services may be offered at a single, through price for the air and surface transportation combined, provided that shippers are not misled as to the facts concerning such transportation.

Article 9 Customs Duties and Charges

1. On arriving in the territory of one Party, aircraft operated in international air transportation by the designated airline or airlines of any other Party, their regular equipment, ground equipment, fuel, lubricants, consumable technical supplies, spare parts (including engines), aircraft stores (including but not limited to such items of food, beverages and liquor, tobacco and other products destined for sale to or use by passengers in limited quantities during flight), and other items intended for or used solely in connection with the operation or servicing of aircraft engaged in international air transportation shall be exempt, on the basis of reciprocity, from all import restrictions, property taxes and capital levies, customs duties, excise taxes, and similar fees and charges that are (i) imposed by the national or central authorities, and (ii) not based on the cost of services provided, provided that such equipment and supplies remain on board the aircraft.

2. There shall also be exempt, on the basis of reciprocity, from the taxes, levies, duties, fees and charges referred to in paragraph 1 of this Article, with the exception of charges based on the cost of the service provided:

- a. aircraft stores introduced into or supplied in the territory of a Party and taken on board, within reasonable limits, for use on outbound aircraft of airlines of the other Parties engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board;
- b. ground equipment and spare parts (including engines) introduced into the territory of a Party for the servicing, maintenance, or repair of aircraft of airlines of the other Parties used in international air transportation;
- c. fuel, lubricants and consumable technical supplies introduced into or supplied in the territory of a Party for use in an aircraft of airlines of the other Parties engaged in international air transportation, even when these supplies are to be used on a part of the journey performed over the territory of the Party in which they are taken on board; and
- d. promotional and advertising materials introduced into or supplied in the territory of one Party and taken on board, within reasonable limits, for use on outbound aircraft of an airline of the other Parties engaged in international air transportation, even when these stores are to be used on a part of the journey performed over the territory of the Party in which they are taken on board.

3. Equipment and supplies referred to in paragraphs 1 and 2 of this Article may be required to be kept under the supervision or control of the appropriate authorities.

4. The exemptions provided by this Article shall also be available where the designated airlines of one Party have contracted with another airline, which similarly enjoys such exemptions from another Party or Parties, for the loan or transfer in the territory of the other Party or Parties of the items specified in paragraphs 1 and 2 of this Article.

Article 10 **User Charges**

1. User charges that may be imposed by the competent charging authorities or bodies of each Party on the airlines of the other Parties shall be just, reasonable, not unjustly discriminatory, and equitably apportioned among categories of users. In any event, any such user charges shall be assessed on the airlines of the other Parties on terms not less favorable than the most favorable terms available to any other airline at the time the charges are assessed.

2. User charges imposed on the airlines of the other Parties may reflect, but shall not exceed, the full cost to the competent charging authorities or bodies of providing the appropriate airport, airport environmental, air navigation, and aviation security facilities and services at the airport or within the airport system. Such charges may include a reasonable return on assets, after depreciation. Facilities and services for which charges are made shall be provided on an efficient and economic basis.

3. Each Party shall encourage consultations between the competent charging authorities or bodies in its territory and the airlines using the services and facilities, and

shall encourage the competent charging authorities or bodies and the airlines to exchange such information as may be necessary to permit an accurate review of the reasonableness of the charges in accordance with the principles of paragraphs 1 and 2 of this Article. Each Party shall encourage the competent charging authorities to provide users with reasonable notice of any proposal for changes in user charges to enable users to express their views before changes are made.

4. No Party shall be held, in dispute resolution procedures pursuant to Article 14, to be in breach of a provision of this Article, unless (i) it fails to undertake a review of the charge or practice that is the subject of complaint by another Party within a reasonable amount of time; or (ii) following such a review it fails to take all steps within its power to remedy any charge or practice that is inconsistent with this Article.

Article 11

Fair Competition

1. Each Party shall allow a fair and equal opportunity for the designated airlines of all Parties to compete in providing the international air transportation governed by this Agreement.

2. Each Party shall allow each designated airline to determine the frequency and capacity of the international air transportation it offers based upon commercial considerations in the marketplace. Consistent with this right, no Party shall act to limit the volume of traffic, frequency or regularity of service, or the aircraft type or types operated by the designated airlines of the other Parties, except as may be required for customs, technical, operational, or environmental reasons under uniform conditions consistent with Article 15 of the Convention.

3. No Party shall impose on another Party's designated airlines a first-refusal requirement, uplift ratio, no-objection fee, or any other requirement with respect to capacity, frequency or traffic.

4. No Party shall require the filing of schedules, programs for charter flights, or operational plans by airlines of the other Parties for approval, except as may be required on a non-discriminatory basis to enforce the uniform conditions foreseen by paragraph 2 of this Article. If a Party requires filings to enforce the uniform conditions as foreseen by paragraph 2 of this Article or requires filings for informational purposes, it shall minimize the administrative burdens of filing requirements and procedures on air transportation intermediaries and on designated airlines of the other Parties.

5. Subject to the provisions of this Agreement, no Party may apply its laws, regulations, and rules to restrict the operation or sale of the charter international air transportation provided for in this Agreement, except that the Parties may require compliance with their own requirements relating to the protection of charter passenger funds and charter passenger cancellation and refund rights.

6. Pursuant to paragraph 1 of this Article, the airlines of each Party shall be entitled to market their services on a fair and nondiscriminatory basis through computer reservations systems (CRSs) used by travel agencies or travel companies in the territories of the Parties. In addition, CRS vendors of each Party that are not in violation of the CRS rules, if any, that apply in the territories of the Parties in which they are operating shall be entitled to non-discriminatory, effective, and unimpaired access to market, maintain, operate and freely make available their CRSs to travel agencies or travel companies in the territories of the Parties. In particular, if any airline of any Party chooses to participate in a CRS offered to travel agents or travel companies in the territory of another Party, that airline shall

participate in CRSs of that other Party operated in the territory of its incorporation as fully as it does in any CRS in the territory of that other Party, unless it can show that the fees charged by that CRS for participation in the territory of its incorporation are not commercially reasonable (fees are presumed to be commercially reasonable if the fees charged the airline for participation in the territory of its incorporation by any other CRS that is used by travel agents or travel companies equal or exceed those charged by the CRS of the other Party for such participation). Airlines and CRS vendors of one Party shall not discriminate against travel agencies or travel companies in that Party's territory because of their use of a CRS of another Party.

Article 12 **Pricing**

Prices for international air transportation operated pursuant to this Agreement shall not be subject to the approval of any Party, nor may they be required to be filed with any Party, provided that a Party may require that they be filed for informational purposes for so long as the laws of that Party continue to so require.

Article 13 **Consultations**

Each Party shall have the right to request consultations with one or more other Parties relating to the implementation or application of this Agreement. Unless otherwise agreed, such consultations shall begin at the earliest possible date, but not later than 60 days from the date the other Party or Parties receive, through diplomatic or other appropriate channels, a written request, including an explanation of the issues to be raised. When the date for consultations has been agreed, the requesting Party shall also notify all other Parties of the consultations and the issues to be raised. Any Party may attend, subject to the consent of the Parties involved in the consultations. Once the consultations have been concluded, all Parties shall be notified of the results.

Article 14 **Settlement of Disputes**

1. Any dispute arising under this Agreement that is not resolved by a first round of consultations may be referred by agreement of the Parties involved for decision to some person or body. If the Parties involved do not so agree, the dispute shall at the request of one Party be submitted to arbitration with respect to another Party in accordance with the procedures set forth below. The Party submitting the dispute to arbitration shall notify all other Parties of the dispute at the same time that it submits its arbitration request.
2. Arbitration shall be by a panel of three arbitrators to be constituted as follows:
 - a. within 30 days after the receipt of a request for arbitration, each Party to the dispute shall name one arbitrator. Within 60 days after these two arbitrators have been named, the Parties to the dispute shall by agreement appoint a third arbitrator, who shall act as President of the arbitral panel;
 - b. if either Party to the dispute fails to name an arbitrator, or if the third arbitrator is not appointed in accordance with subparagraph (a) of this paragraph, either Party may request the President of the Council of the International Civil Aviation Organization to appoint the necessary arbitrator or arbitrators within 30 days. If the President of the Council is of the same

nationality as one of the Parties to the dispute, the most senior Vice President who is not disqualified on that ground shall make the appointment.

3. Except as otherwise agreed by the Parties to the dispute, the arbitral panel shall determine the limits of its jurisdiction in accordance with this Agreement and shall establish its own procedural rules. The arbitral panel, once formed, may recommend interim measures pending its final determination. At the direction of the arbitral panel or at the request of either of the Parties to the dispute, a conference concerning the precise issues to be arbitrated and the specific procedures to be followed shall be held on a date determined by the arbitral panel, in no event later than 15 days after the third arbitrator has been appointed. If the Parties to the dispute are unable to reach agreement on these issues, the arbitral panel shall determine the precise issues to be arbitrated and the specific procedures to be followed.

4. Except as otherwise agreed by the Parties to the dispute or as directed by the panel, the complaining Party shall submit a memorandum within 45 days of the time the third arbitrator is appointed, and the reply of the responding Party shall be due 60 days after the complaining Party submits its memorandum. The complaining Party may submit a pleading in response to such reply within 30 days after the submission of the responding Party's reply and the responding Party may submit a pleading in response to the complaining Party's pleading within 30 days after the submission of such pleading. The arbitral panel shall hold a hearing at the request of either Party or on its own initiative within 15 days after the last pleading is due.

5. The arbitral panel shall attempt to render a written decision within 30 days after completion of the hearing or, if no hearing is held, after the date the last pleading is submitted. The decision of the majority of the arbitral panel shall prevail.

6. The Parties to the dispute may submit requests for clarification of the decision within 15 days after it is rendered, and any clarification given shall be issued within 15 days of such request.

7. In the case of a dispute involving more than two Parties, multiple Parties may participate on either or both sides of a proceeding described in this Article. The procedures set out in this Article shall be applied with the following exceptions:

- a. with respect to paragraph 2(a), the Parties on each side of a dispute shall together name one arbitrator;
- b. with respect to paragraph 2(b), if the Parties on one side of a dispute fail to name an arbitrator within the permitted time, the Party or Parties on the other side of the dispute may utilize the procedures in paragraph 2(b) to secure the appointment of an arbitrator; and
- c. with respect to paragraphs 3, 4, and 6, each of the Parties on either side of the dispute has the right to take the action provided to a Party.

8. Any other Party that is directly affected by the dispute has the right to intervene in the proceedings, under the following conditions:

- a. a Party desiring to intervene shall file a declaration to that effect with the arbitral panel no later than 10 days after the third arbitrator has been named;
- b. the arbitral panel shall notify the Parties to the dispute of any such declaration, and the Parties to the dispute shall each have 30 days from the

date such notification is sent to submit to the arbitral panel any objection to an intervention under this paragraph. The arbitral panel shall decide whether to allow any intervention within 15 days after the date such objections are due;

- c. if the arbitral panel decides to allow an intervention, the intervening Party shall notify all other Parties to the Agreement of the intervention, and the arbitral panel shall take the necessary steps to make the documents of the case available to the intervening Party, who may file pleadings of a type and within a time limit to be set by the arbitral panel, withip the timetable set out in paragraph 4 of this Article to the extent practical, and may participate in any subsequent proceedings; and
- d. the decision of the arbitral panel will be equally binding upon the intervening Party.

9. All Parties to the dispute, including intervening Parties, shall, to the degree consistent with their law, give full effect to any decision or award of the arbitral panel.

10. The arbitral panel shall transmit copies of its decision or award to the Parties to the dispute, including any intervening Parties. The arbitral panel shall provide to the Depositary a copy of the decision or award, provided that appropriate treatment shall be accorded to confidential business information.

11. The expenses of the arbitral panel, including the fees and expenses of the arbitrators, shall be shared equally by all of the Parties to the dispute, including intervening Parties. Any expenses incurred by the President of the Council of the International Civil Aviation Organization in connection with the procedures of paragraph 2(b) of this Article shall be considered to be part of the expenses of the arbitral panel.

Article 15 **Relationship to Other Agreements**

Upon entry into force of this Agreement between one Party and any other Party, any bilateral air transport agreement existing between them at the time of such entry into force shall be suspended and shall remain suspended for so long as this Agreement shall remain in force between them.

Article 16 **Relationship to Annex**

The Annex is an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement includes a reference to the Annex relating thereto.

Article 17 **Amendment**

1. Any Party may propose amendments to this Agreement by forwarding a proposed amendment to the Depositary. Upon receiving such a proposal, the Depositary shall forward the proposal to the other Parties through diplomatic or other appropriate channels.

2. The Agreement may be amended in accordance with the following procedures:
 - a. if agreed by at least a simple majority of all Parties as of the date of proposal of the amendment, negotiations shall be held to consider the proposal;
 - b. unless otherwise agreed, the Party proposing the amendment shall host the negotiations, which shall begin not more than 90 days after agreement is reached to hold such negotiations. All Parties shall have a right to participate in the negotiations;
 - c. if adopted by at least a simple majority of the Parties attending such negotiations, the Depositary shall then prepare and transmit a certified copy of the amendment to the Parties for their acceptance;
 - d. any amendment shall enter into force, as between the Parties which have accepted it, 30 days following the date on which the Depositary has received written notification of acceptance from a simple majority of the Parties; and
 - e. following entry into force of such an amendment, it shall enter into force for any other Party 30 days following the date the Depositary receives written notification of acceptance from that Party;
3. In lieu of the procedures set forth in paragraph 2, the Agreement may be amended in accordance with the following procedures:
 - a. if all Parties as of the time of proposal of the amendment give written notice through diplomatic or other appropriate channels to the Party proposing the amendment of their consent to its adoption, the Party proposing the amendment shall so notify the Depositary, which shall then prepare and transmit a certified copy of such amendment to all of the Parties for their acceptance; and
 - b. an amendment so adopted shall enter into force for all Parties 30 days following the date on which the Depositary has received written notification of acceptance from all of the Parties.

Article 18 Withdrawal

A Party may withdraw from this agreement by giving written notice of withdrawal to the Depositary. The withdrawal shall be effective 12 months after receipt of the notice by the Depositary, unless the Party withdraws its notice by written communication to the Depositary prior to the end of the 12-month period.

Article 19 Responsibilities of the Depositary

1. The original of this Agreement shall be deposited with the Government of New Zealand, which is hereby designated as the Depositary of the Agreement.
2. The Depositary shall transmit certified copies of this Agreement and any amendments or protocols to all signatory and acceding States and all APEC member economies which have agreed to be bound by this Agreement in accordance with the Annex.

3. The Depositary shall notify all signatory and acceding States and all APEC member economies which have agreed to be bound by this Agreement in accordance with the Annex of:

- a. expressions of consent to be bound by this Agreement and any amendments in accordance with Articles 20 and 17, and instruments of APEC member economies indicating their agreement to be bound by this Agreement in accordance with the Annex or their acceptance of any amendments in accordance with Article 17;
- b. the respective dates on which the Agreement enters into force in accordance with Article 20, paragraphs 2, 3, and 6, and the respective dates on which the rights and obligations described in paragraph 2 of the Annex become effective following the deposit of a written instrument by APEC member economies pursuant to paragraph 1 of the Annex;
- c. notifications regarding non-application of the Agreement received in accordance with Article 20, paragraph 5;
- d. any notification of withdrawal received in accordance with Article 18;
- e. the convening of negotiations to consider amendments in accordance with Article 17, paragraph 2(a);
- f. the respective dates on which an amendment enters into force in accordance with Article 17, paragraphs 2(d), 2(e) and 3(b); and
- g. notifications received pursuant to Article 4, paragraph 3 and Article 7, paragraph 7.

4. Following entry into force of this Agreement, the Depositary shall transmit a certified true copy of this Agreement to the Secretary General of the United Nations for registration and publication in accordance with Article 102 of the Charter of the United Nations and to the Secretary General of the International Civil Aviation Organization in accordance with Article 83 of the Convention. The Depositary shall likewise transmit certified true copies of any amendments which enter into force.

5. The Depositary shall maintain a centralized register of airline designations and operating authorizations in accordance with Article 3, paragraphs 1 and 4 of this Agreement.

6. The Depositary shall make available to the Parties copies of any arbitral decision or award issued under Article 14 of this Agreement.

Article 20 **Entry into Force**

1. This Agreement shall be open for signature by Brunei Darussalam, Chile, New Zealand, Singapore, and the United States of America.

2. This Agreement shall enter into force on the date four of the States identified in paragraph 1 of this Article have signed not subject to ratification, acceptance or approval, or have deposited with the Depositary an instrument of ratification, acceptance or approval. The signatories to this Agreement may permit services consistent with the terms of the

Agreement upon signature pending entry into force of the Agreement with respect to all of the States identified in paragraph 1 of this Article.

3. After this Agreement has entered into force in accordance with paragraph 2 of this Article, it shall enter into force for a remaining signatory on the date the Depositary receives the instrument of ratification, acceptance or approval of that signatory.

4. After this Agreement has entered into force in accordance with paragraph 2 of this Article, any State which is a party to the aviation security conventions listed in Article 7, paragraph 1 may accede to this Agreement by deposit of an instrument of accession with the Depositary.

5. This Agreement shall not apply between an acceding State or an APEC member economy which agrees to be bound by this Agreement in accordance with the Annex and any Party to this Agreement or APEC member economy which, within 90 days of the date of the Depositary's notification to the Parties of the deposit of the instrument of accession or written instrument indicating agreement to be bound, notifies the Depositary in writing that it shall not apply between that Party or such APEC member economy and such acceding State or APEC member economy. Any signatory that expresses its consent to be bound after the Agreement has entered into force pursuant to paragraph 2 of this Article, upon expressing its consent to be bound, may notify the Depositary in writing that the Agreement shall not apply between that signatory and any State that acceded to the Agreement, or any APEC member economy that agreed to be bound by the Agreement in accordance with the Annex, before the Agreement entered into force for that signatory.

6. This Agreement shall enter into force as between the acceding State and all Parties other than those which, pursuant to paragraph 5 of this Article, have notified the Depositary of the non-application of the Agreement, on the 30th day after the expiry of the 90-day period referred to in paragraph 5 of this Article.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

DONE at Washington, this 1st day of May, 2001, in the English, Spanish and Malay languages, each text being authentic. In case of divergence between the three language texts, the English language text shall prevail.